THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.26119 OF 1995

DATED:21.11.2006

BETWEEN:

The Ex-Officio Executive Director,
I.M.L. Depot, A.P. Beverages Corporation Ltd.,
Wyra, Khammam district … Petitioner.
And another

And

1. Vepuri Sathyam

2. The Industrial Tribunal-cum-
Labour Court, Warangal.

… Respondents.

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WRIT PETITION NO.26119 OF 1995

ORDER:

The officers of the A.P. Beverages Corporation Limited filed the present writ petition questioning the award of Industrial Tribunal – cum – Labour Court, Warangal made in I.D.No.58 of 1992 dated 25.10.1994. By way of said award the second respondent has disposed of a batch of cases and the present writ petition concerned itself with I.D.No.58 of 1992.

The first respondent was initially taken as a Casual Labourer in August 1997 and worked till the first week of June 1998. According to the petitioners he worked for short spells upto 1989. As the bottling of arrack was practically dispensed with from the excise year 1988-89, several workmen of the unit have become surplus. As there were 80 workmen working at that time as against the required strength of 43, the respondent prepared a seniority list, which was displayed on notice board on 23.11.1989 and 43 senior most workmen from out of the said list, were retained and the services of other workmen were dispensed with from 30.11.1989. According to the petitioners, since the first respondent has not completed 240 working days in any calendar year, he is not entitled to protection under Section 25-F of the Industrial Disputes Act (for short 'the Act'). The petitioners aver that the first respondent and other workmen raised an industrial dispute

before the second respondent, which by its award, as aforementioned, directed the petitioners to reinstate the workmen including the first respondent into service with continuity of service but without back wages. This writ petition is filed to the extent the award relates to the first respondent. This court while admitting the writ petition granted the stay of operation of the award subject to the compliance of Section 17-B of the Act.

Heard Sri G.Manohar, learned counsel for the petitioners and Sri Chinna Baba, the learned counsel for the first respondent.

Sri G.Manohar, learned counsel contends that the second respondent committed a patent error in holding that the termination of the services of the first respondent is in violation of the provisions of the Industrial Disputes Act. A direction for reinstatement, according to the learned counsel, on that premise is vitiated by error apparent on the face of the record. The learned counsel elaborates this contention stating that the first respondent in any of the years from 1987 to 1989 has not worked for 240 days and that therefore, no right came to be vested in the first respondent to question the termination as being violative of Section 25-F of the Act. The learned counsel further contended that the specific plea of the petitioners before the second respondent-Tribunal was that in the year 1987 the first respondent has put in 28 days of service, in the year 1988 he had put in 112 days and in the year 1989 he had put in 89 days of service and that therefore, the protection available under Section 25-F of the Act cannot be claimed by the first respondent and on the premise that Section 25-F is violated, the first respondent is not entitled to any relief.

Per contra, Sri Chinna Baba, learned counsel contended that the second respondent has, after going through the record and registers produced by the petitioners, arrived at the finding of fact that the

termination is contrary to the provisions of the Act and therefore, the award cannot be interfered with.

Having carefully considered the rival contentions of the learned counsel it is not in dispute that if a workman had put in a continuous service of 240 days within the meaning of Section 25-B of the Act, his services cannot be terminated without giving one month notice or wages in lieu of such notice. It is therefore, incumbent upon the workman, who approaches the Labour Court or Industrial Tribunal to prove that he has put in continuous service of 240 days as a workman and that his services were terminated without following the provisions of Section 25-F of the Act. In the petition filed before the second respondent-Tribunal, there is no specific averment that the first respondent has completed 240 days of continuous service in any of the years during which he worked, though it was pleaded that the termination without giving notice or payment of compensation in lieu of prior notice is contrary to the mandatory provisions of Section 25-F of the Act. In para-7 of the counter filed by the petitioners before the second respondent-Tribunal, it was specifically pleaded that the first respondent has not completed 240 working days in 1987 to 1989 calendar years and that he had put in 28 days service in the year 1987, 112 days service in the year 1988 and 87 days in 1989. No rejoinder was filed by the first respondent denying this specific averment.

Before the second respondent, the petitioners have produced Exs.M.4 and M.5 Attendance Registers for the relevant period and Ex.M.9 Pay Registers for the year 1986 to 1990 in support of their contention that the first respondent has not put in the required number of 240 days continuous service. The second respondent which dealt with the case, along with number of other cases of workmen, has not specifically dealt with the case of the petitioner in rendering the finding

as to whether the first respondent has actually put in 240 days of service. The second respondent has taken note of the fact that the petitioners have produced Attendance Registers and Pay Registers for the relevant period. It has declined to rely upon the Attendance Registers on the ground that there are some alterations in Ex.M.5 and they were not counter signed after the Attendance Register was marked, by the Plant Supervisor. The other reason for the second respondent for not relying upon the attendance register was that the employee who made entries in the attendance register was not examined. As regards the Pay Register, the second respondent failed to deal with the correctness or otherwise of the entries in the Pay Register. The second respondent also made an observation with respect to the number of days of service put in, in his award, which it is apt to extract hereunder:

> " It is not denied by the respondent that the petitioners have continuous service of 240 days in the year 1987."

This finding is contrary to the record, in that, at para-7 of the counter filed by the petitioners herein, it is submitted as under:

> " This respondent further submits that, the petitioner was restrained from working in the unit of this respondent as casual labourer, as per the policy of the Government, since he has not completed 240 days working days in 1987 to 1989 calendar years. This respondent has not accommodated the petitioner within the seniority list, below 43 since he did not complete 240 working days in the years 1987 to 1989, as such he was placed at Sl.No.73, in the seniority list, taking into consideration of his total days worked in the unit during the calendar years 1987 to 1989 only with that of other casual labourers. The petitioner has worked as casual labourer only for 28 days in the years 1987, 112 days in the year 1988 and 86 days in the year 1989."

The second respondent has not made a correct approach in

arriving at the conclusion as to whether the first respondent has put in 240 days of continuous service. As already mentioned, there is no specific denial of the plea raised by the petitioners that in none of the three years during which the first respondent has worked he has put in 240 days continuous service. In the absence of any such denial and a specific plea disputing the correctness of the Registers produced by the petitioners, there is no occasion for the petitioners to examine the employee concerned, who made entries in the registers at the relevant point of time. As the primary burden to show that the first respondent has put in 240 days of continuous service lies on him and he has failed to discharge the said burden, the onus has not shifted to the petitioners to prove that the petitioner has not worked for 240 days in any calendar year. Even, then the two registers namely, Attendance Registers and Payment Registers, whose genuineness was not impeached by the first respondent, amply prove that the first respondent has not put in the required number of man days to attract Section 25-F of the Act.

For the aforementioned reasons, I am of the view that the award of the second respondent qua the petitioner cannot be sustained. The writ petition is therefore, allowed and the award of the second respondent is set aside to the extent it relates to the first respondent. As a sequel, the interim order granted in W.P.M.P.No.32195 of 1995 shall stand dissolved. It is however made clear that the petitioners shall not recover the wages paid to the 1st respondent in pursuance of the interim order passed by this Court pending the writ petition.

21.11.2006.

Mdaa